

Return To:  
Sanderson Stewart  
1300 North Transtech Way  
Billings, MT 59102

## COMPENSATION AGREEMENT

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as the "CITY", and SCHOOL DISTRICT NO. 2 of Facility Services, 101 10th Street West, Billings, Montana, 59102, hereinafter referred to as "DEVELOPER".

### WITNESSETH

WHEREAS, no person, developer, customer or applicant shall acquire any vested rights under the terms and provisions of this agreement; and

WHEREAS, DEVELOPER has agreed to extend street and storm drain facilities for the purpose of providing service through plans and specifications approved by the City on the \_\_\_\_\_ day of \_\_\_\_\_, 2014. Said plans and specifications generally provide for the construction of street and storm drain facilities which are specifically described in Exhibit 1, attached hereto; and

WHEREAS, DEVELOPER is desirous of obtaining compensation for a half of the construction/widening of Barrett Road and storm drain facilities fronting the new Heights Middle School including the private contract fee, engineering design fees, and construction administration services fees hereafter described; and

WHEREAS, the CITY is desirous of compensating the DEVELOPER for a portion of such street and storm drain facilities, private contract fee, engineering design fees, and construction administration services fees.

NOW, THEREFORE, CITY and DEVELOPER, in consideration of their mutual promises to each other hereinafter stated, agree as follows:

1. The street and/or storm drain facilities, private contract fee, engineering design fees, and construction administration services fees which are eligible for compensation to the extent set forth in this Agreement are specifically described in Exhibit 1, attached hereto, and by this reference incorporated herein as if fully set out.

2. With respect to DEVELOPER'S entitlement to compensation, the CITY and DEVELOPER agree that the conditions set forth hereinafter, must be met before DEVELOPER is entitled to or will receive any compensation. Said conditions are:

- (a) The extent, timing, and manner of the CITY'S participation in a street and storm drain construction must be in compliance with city, state and federal laws, rules, and regulations. Necessary funds must be included in the current, approved Capital Improvements Projects (CIP) budget in order to be eligible for compensation back to the DEVELOPER. The DEVELOPER may choose to proceed with an construction project without waiting for funds to be made available in the CIP budget; in this case, the DEVELOPER is responsible for paying the entire cost of the construction. Construction not eligible for

compensation according to these CITY policies and practices must be constructed by the DEVELOPER at his expense.

- (b) DEVELOPER shall provide to the CITY sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the street and/or storm drain facilities and approval and acceptance by the CITY that all construction was completed according to the approved plans and specifications.
- (c) DEVELOPER shall enter into a compensation agreement with the CITY at the time the CITY approves the DEVELOPER'S application for construction of street and/or storm drain facilities or, in the case of a replacement project, prior to submittal of preliminary plans and specifications by the DEVELOPER.
- (d) Upon completion of the construction of street and/or storm drain facilities, the DEVELOPER must convey all right, title and interest in the facilities to the CITY.
- (e) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing compensation to DEVELOPER.
- (f) Construction of street and/or storm drain facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the CITY, including but not limited to standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.

DEVELOPER agrees that it will not be entitled to any compensation whatsoever until the above conditions have been completely satisfied. DEVELOPER'S violation of any of the conditions set forth herein may, at the option of the CITY, result in denial of any and all compensation to the DEVELOPER.

3. In addition, it is expressly agreed that any compensation is conditioned upon the following:

- (a) Compensation is limited to costs attributable to street and/or storm drain facilities, private contract fee, engineering fees, and construction administration services fees described in Exhibit 1, less all administrative costs incurred by the CITY. In no event will compensation exceed the actual cost to the DEVELOPER of extending street and/or storm drain facilities.
- (b) Compensation shall not include any interest charges.

Acceptance of the street and/or storm drain facilities for purposes of compensation as set forth in this agreement shall be evidenced by written notice of a letter from the Public Works Department of the CITY and directed to the DEVELOPER at the address set forth in the first paragraph of this agreement.

4. The CITY, by this agreement, is not guaranteeing that full compensation by the CITY to the DEVELOPER will be made. The CITY is only agreeing that it will develop a plan under its current CIP to include funding for compensation of street and/or storm drain facilities which have been constructed and associated private contract fee, engineering fees, and construction administration services fees at the DEVELOPER'S expense, will be made as set forth herein. Compensation does not apply to additional construction of the street and/or storm drain facilities. Compensation shall be based upon the final total project costs.



CITY OF BILLINGS

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA     )  
                                  : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year hereinabove written.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT 1**

**City of Billings Monetary Compensation for  
Extension of Street and Storm Drain Facilities for Heights Middle School**

**Street Improvements – Barrett Road**

Donnes, Inc. Final Construction Cost: \$ 361,670.40  
(see attached signed final pay estimate)

**Storm Drain Improvements – Barrett Road**

Donnes, Inc. Final Construction Cost: \$ 133,240.00  
(see attached signed final pay estimate)

**Private Contract Fee**

Final Cost: \$ 18,651.26

**Engineering Fees & Construction Administration Services**

Final Cost: \$ 75,000.00

**Grand Total of Final Costs: \$ 588,561.66**

**City Compensation to School District No. 2** **\$ 294,280.83**  
(50% of Grand Total)